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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re KA. S. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

KATRINA V.,

Defendant and Appellant.

D060626

(Super. Ct. No. EJ3240A-C)

APPEAL from a judgment of the Superior Court of San Diego County, Carol
Isackson, Judge. Affirmed.

Katrina V. appeals the judgment terminating her parental rights to her daughters,
Ka. S. and Ki. S. and her son, D.S. (together, the children). Katrina contends the juvenile

court erred by declining to apply the beneficial relationship exception (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i)) to termination of parental rights. We affirm.

BACKGROUND

In May 2010 the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for three-year-old Ka., two-year-old D.S. and nine-month-old Ki. The petitions alleged Katrina and the children's presumed father, Joshua S., had an extensive history of substance abuse. On May 7 Katrina drove the children to a supermarket and left Ka. and D.S. in the vehicle. Inside the supermarket, Katrina behaved strangely. There was a powdery substance in her nose and a white pasty substance on her lips. She had hypodermic needles and prescription medication but no prescriptions. Ka. and D.S. were found running around the parking lot. They had a small bottle containing red wine. Katrina admitted relapsing nine months earlier. She was arrested for being under the influence of a controlled substance, child endangerment and possessing hypodermic needles.

The children were detained in Polinsky Children's Center then moved to foster homes. On May 13, 2010, at the detention hearing, Katrina was arrested for breaking into a neighbor's car. She was jailed. On June 1 Ka. and D.S. were moved to a new foster home, and Ki. was moved to the home of a nonrelative extended family member. On June 17 the juvenile court entered true findings on the petitions and ordered the children removed from parental custody.

¹ All further statutory references are to the Welfare and Institutions Code.

On August 9, 2010, Katrina was released from jail. She was supposed to enter KIVA, a substance abuse treatment program, but did not do so. She reunited with Joshua despite their history of domestic violence. By August 25 Katrina had tested positive for cocaine and was in jail again. In October, while in jail, she gave birth to her fourth child. The baby tested positive for methadone, and the Agency filed a dependency petition for him.²

On November 19 Katrina was released from jail for the second time. She said she was going to KIVA, but instead reunited with Joshua and resumed using drugs. Katrina entered KIVA on December 7 but left two days later and went back to Joshua. She entered the Parent Care program, but tested positive for heroin and Percocet on January 18, 2011. On January 24 she refused to test and left Parent Care.

On February 14 Ka. and D.S. were moved to a prospective adoptive home. On March 14, at the six-month review hearing, the court set a section 366.26 hearing. On March 30 Katrina was arrested and pleaded guilty to theft charges, bringing drugs into prison and giving false information to a police officer. On June 1 she was sentenced to two years in prison. She was sent to a prison outside San Diego County.

The section 366.26 hearing took place in August 2011.

² The baby is not a subject of this appeal.

DISCUSSION

If a dependent child is adoptable,³ the juvenile court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) One such exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) If terminating parental rights "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome" (*Ibid.*) The existence of a beneficial relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs" (*Id.* at p. 576.) Examining the evidence in the light most favorable to the judgment (*ibid.*), we conclude substantial evidence supports the juvenile court's findings that Katrina's visitation "was far from regular and consistent," and, to the extent there was a bond between her and the children, it was "a really casual relationship" and did "not weigh more heavily than the benefits of adoption."

Katrina's visits were supervised and inconsistent. When she was incarcerated, she often had only two visits per month. Even when she was out of custody she did not visit

³ Katrina does not contest the adoptability finding.

regularly. She had one visit before her May 13, 2010, arrest. After her release from jail in November she made minimal efforts to see the children. She scheduled a visit at KIVA in December, but left KIVA before the visit. Later that month she showed up at one of Joshua's visits. In January 2011 Katrina missed three visits. In February she had four visits with Ka. and D.S., but by February 25 she had missed the last seven visits with Ki. Katrina did not show up for a March 1 visit with Ka. and D.S. Katrina's last visit with them took place on May 20, and her last visit with Ki. took place on May 27. At the section 366.26 hearing, Katrina's counsel acknowledged Katrina's incarceration had prevented her from visiting "as much as she would like."⁴

Visits were relatively positive and Katrina interacted lovingly with the children. Ka. and D.S. sometimes returned her affection, but Ki. was not bonded to Katrina. The children were flourishing in the homes of their caregivers, who wished to adopt them. The children called their foster parents "mommy" and "daddy." Ka. and D.S. were comfortable in their foster home and Ki. was attached to her foster parents. The social worker noted that adoption would give the children stability, security, consistency and a sense of belonging.

At the time of the section 366.26 hearing, Ka. was nearly five years old, D.S. was three and one-half years old and Ki. was two years old. During this case the children had been out of Katrina's care for more than 15 months. Ka. had also been out of Katrina's care for at least a year, beginning when she was three months old, in a Florida

⁴ Katrina suggests she is not responsible for the infrequent visitation necessitated by her incarceration. It was her responsibility, however, to stay out of custody. (*In re Christopher A.* (1991) 226 Cal.App.3d 1154, 1162.)

dependency case that arose from Ka.'s exposure to domestic violence and Katrina's and Joshua's substance abuse. Additionally, Katrina had been incarcerated in Florida for several months, beginning a few months after Ki. was born. Ka. and D.S. were currently in therapy to address the effects of the trauma they had experienced while in Katrina's care.

Substantial evidence supports the conclusion the children's relationship with Katrina did not promote the children's "well-being . . . to such a degree as to outweigh the well-being [they] would gain" by being adopted.⁵ (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.

⁵ Two cases Katrina cites, *In re Jerome D.* (2000) 84 Cal.App.4th 1200 and *In re S.B.* (2008) 164 Cal.App.4th 289, are factually distinguishable from the instant case.